

Report of the
Coastal Beach Land Deed Research
For the
**TOWN OF WELLS & WELLS NATIONAL
ESTUARINE RESEARCH RESERVE**



June 1, 2016

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The authors and researchers of this report and the project advisors wish to acknowledge and thank Town of Wells residents Peter Moody and Town Historian Hope Shelley for their contribution to this report. Their knowledge of the history of Wells and the information they provided were invaluable.

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Funding:

This report was prepared with financial assistance from the Maine Coastal Program, Maine Department of Agriculture, Conservation and Forestry. Funding was provided by the National Oceanic and Atmospheric Administration's Office for Coastal Management, U.S. Department of Commerce under coastal zone management award NA15NOS4190208. The statements, findings, conclusions and recommendations are those of the author(s) and do not necessarily reflect the views of the NOAA/OCM or the U.S. Department of Commerce. Additional funding was provided by the Town of Wells and the Wells Reserve.



I. INTRODUCTION:

This report is the result of the Coastal Beach Land Deed Research Services as outlined in the request for qualification and proposal by the Town of Wells in collaboration with the Wells National Estuarine Research Reserve (Wells Reserve). The project was awarded to Maine Boundary Consultants, Robert A. Yarumian, II, (RAY) Professional Land Surveyor, as Principal Investigator. The Project Team includes: Edwin A. Churchill, Ph.D, (EAC) a Historical and Museological Consultant, as well as Matthew A. Sukeforth (MAS), Research Expert, and Daniel T. Yarumian (DTY), Professional Land Surveyor, both of Maine Boundary Consultants.

The primary goals of this project are as follows:

- To determine the authorizing land grants from the King of England for the area of land that encompasses the Town of Wells, and the source of the title of the original land grants into private ownership;
- To investigate how the deeds and source of ownership were conveyed forward in time to some of the current beach front landowners.
- To determine if the original land grants that reference the word “Seawall” for their easterly boundary line were changed to include portions of the beach extending beyond their original boundaries of the seawall or marshlands;
- To determine when the words in the deeds describing the boundary limits changed to include portions of the beach beyond the original lines of ownership.

As per the Colonial Ordinances 1641-47 *“the proprietor of the land adjoining shall have proprietie to the low water mark where the Sea doth not ebb above a hundred rods, (1,650 feet) and not more wheresoever it ebs father. And Everie Inhabitant who is an hous-holder shall have free fishing and fowling..... the passage of boats or other vesselsand passe and repasse on foot”* (original spelling preserved) see Massachusetts Body of Liberties § 16, December 10, 1641, and later amended “Liberties Common §2, The Book of General Lawes and Liberties Concerning the Inhabitants of Massachusetts, Boston, Mass. 1647 facsimile reprinted in 1 D Cushing, the Laws and Liberties of Massachusetts 1641-1691 at 41, 197.

Today the general public and the courts understand that this law simply says that as a general rule the upland landowner who owns land next to the ocean owns to the low water mark or low tide line. The area of land between high and low tide is known as the intertidal zone. However, the ownership of the intertidal zone (or beach) is subject to the right of the general public to fish, fowl (bird hunt) and navigate. This is generally true and accepted throughout the State of Maine. Private ownership of the intertidal zone is uncommon in other States where the upland landowner only owns to the high water mark (tide) and the State owns the intertidal zone.

However, in order for the upland landowner to own land to the low water mark a parcel needs to be conveyed to him/her by someone who actually has ownership of it in the first place. A person cannot convey land that he/she does not own.

The area of land along water bodies has historically been subject to separations at some point in time. Throughout history, there have been many court cases dealing with the separation of the upland owner with the intertidal zone, mud-flats, shore area, beach, marshes, etc.

This deed research investigation focused attention on the Wells Beach and Moody Beach areas. The results are not a complete investigation of these beaches. Rather, they represent a small fraction in order to give a general sample of the some of the parcels of land along these beaches.

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Cover design by Daniel T. Yarumian, PLS, 1794 Wells Town Map and 2016 photos by RAY

III. FINDINGS:

During their research investigation, the authors determined that the source of all land titles came from the Town of Wells, and not a private individual or individuals. Initially, the Deputy Governor of Maine, Thomas Gorges, on behalf of Sr. Ferdinando Gorges “Lord proprietor” of Maine, conveyed only five (5) parcels to individuals between 1642-1643. All of these were “leasehold” sources of title. All five (5) of these owners’ grants were confirmed by the Town of Wells and/or the Proprietors of the Town of Wells at a later date.

On July 14, 1643, Thomas Gorges granted Wells Plantation to John Wheelwright, Henry Boade and Edward Rishworth., [CR 1, 01] and [CR 1, 01,02]. The three men acted as Commissioners for Wells, not as individuals. This July 14, 1643 document would be the source title to the land for the Town of Wells. This source of title is confirmed by the June 30, 1715, Town meeting which stated:

At a legal meeting freeholders and other inhabitants of the Town of Wells voted Joseph Hill, Daniel Littlefield, Nicolas Cole, be a committee in behalf of the Town to run divided line between York Kittery and Wells and also the head bounds of this town eight miles from the Sea and parallel to the foot line by the sea shore according to the Grant our township from Mr. Gorges. see 1715-06-30 [CR 1, 20].

This above indicates that the township was from a grant from Sr. Ferdinando Gorges, and indicates that the town borders the **Sea**.

On November 22, 1652, the General Court of Massachusetts Bay Company granted and created York County and indicates the following:

a grant ofshall enjoy the same bounds, that are clear between Towne & Towne, as hath been formerly granted with Commissioners of each bordering Towne hath viewed, & returned to our general Court with a survey. That both each Towne, & every inhabitant shall have & enjoy all their just propriety’s, titles & interests, in the houses & lands which they do possess, whither by the grant of the Towne,..... this our grant, shall extend to determine the infringing of any persons right (w’ possession is had) to any land or inheritance, whither by grant, by patent, or other- wise, but such titles shall be left free to be heard, & determined by due Course of law. see [YD 1(i),20]

Here the General Court is acknowledging the existing Commissioners of former granted towns and their rights to grant land. Wells was incorporated as a Town on July 5, 1653.

There are numerous Deeds found recorded in the early York County Registry of Deeds Books [YD] from the Town of York and Town of Kittery, between the mid-1600s to the late-1600s. However, there are only a few deeds found recorded in the early York Deeds Books from the Wells Commissioners, or the Wells Selectmen, to individuals between 1645 to about 1670. There is clearly a missing Book of the Town records. The known Town of Wells Clerk Record Book [CR] starts about 1713. The Town of Wells Clerk Records and Proprietors of the Town of Wells Records [PR] have numerous (dozens) references of prior grants between the 1660s and 1690s. As a result, there are many unrecorded (or lost) original land grants from the Town of

Wells.

Initially the Town of Wells granted out parcels that were called “Town Lots,” and later known as the “Old Town Lots” see **Exhibit A: Map of Old Town Lots**. Each Town Lot usually included an additional “marsh,” “meadow,” “salt marsh” or “thatch bed.” These marshes were extremely valuable and sought after by the early settlers. Without much effort the marshes provided housing materials and food for the animals. The Town Lots were “upland” (high and dry) parcels with a certain width and extended “up into the country on straight line” to complete a certain amount of acreage. Later, the Town decided that each Town Lot should extend two and one half miles (13,200 feet) inland. The Town Lot usually started at the “foot line” on or near Route One, or they extended to the marshes, and at times to a river or creek within the marshes. With the exception of two or three, none of the Town Lots extended beyond the marshes across the river(s) to the sea or ocean.

All of the original grants of the Town Lots that mention the marshes or other grants for individual marshes do not give a clear description of the marsh location. Sometimes when they were granted the location was based on “*A place convenient to the marsh as may be*”. See **1659-12-07 [YD 2, 82]** Or “*Of meadow if it may be found out of any man’s propriety*” See **1670-06-24[CR 1, 124]**. It was clear that the treatment of the boundaries of the marshes was based on the occupation.

During the research investigation, the term “Seawall” was used for nearly all of the parcels of land found in the Early Deed Books, Town Clerk Records, and the Proprietors of the Town of Wells Record from the beginning of time into the mid-1700s. See **Exhibit B Abstract**. The words “Sea” or “Beach” were only mentioned in a few documents.

It is clear that by the beginning of the 18th century, when Wells had a huge influx of new settlers, the salt marshes were already conveyed out. However there is evidence that the Town kept a large area of “Town Commons” or the “Town Marshes” in and around the salt marshes. See **1724-08-25[CR 1, 80]** and **1725-05-05 [CR 1, 88]**. It is assumed that this was close to the Harbor area and was not researched. What happened to the Town Marshes was not found during this research investigation.

Important historical note: When the Town of Wells was established and throughout much of its early history, it included what is today the Town of Kennebunk and the Town of Ogunquit. Kennebunk remained part of Wells until its incorporation as its own municipality in 1820; Ogunquit became its own municipality in 1980.

IV. CONCLUSIONS:

As a result of this research investigation, it was determined that clearly the Town of Wells was the source of the land titles for the original parcels in the Town.

It was also determined that any land that was conveyed out near the beaches were either marshes or islands.

The beaches were used for travel and during the mid to late 1700s the Town of Wells had appointed officials called “Beach Drivers” to take care of the beach, prevent mowing, and to prosecute anyone who offended the Beach Act of 1757.

The 1794 Plan of Wells on the cover of this report shows that a road along the beach crossing the rivers would have been what were called “wading places.” The area of land from Ogunquit Beach to Drakes Island is labeled as “*All this Blank Strip is a Beach of White Sand.*” The Plan also points out the “*Salt Marsh*” and “*Town River.*” The term “Blank Strip” indicates the attitude of the time period concerning the beach. It was not of much use other than as a convenient place of travel and to land boats.

The terms “island,” “seawall,” or “salt marsh” were used to determine the extent of the ownership of any of the parcels that were originally conveyed out near the beaches by the Town. The terms “beach,” “sea,” “ocean” or some other term to include the beach area were almost never found in the early grants, layouts, confirmations, and/or deeds.

The historical evidence found in the grants, layouts, deeds, confirmations, and other evidence such as the term “Blank Strip” leads this question: Was the beach area ever conveyed out by the Town of Wells to a private individual?

It wasn't until the mid to late 1800s and early 1900s that the term “Atlantic Ocean” started to be used in the deeds. This happened only when ocean-front beach houses were being developed. It appears that during this time period, owners of marsh lands were conveying their land to an individual or developer and the marsh lands were expanded toward the ocean boundary.

Town of Wells Timeline (land ownership)

1639: Sir Ferdinando's grant to Maine, the foundation grant from which the original Wells grants derived

1641: Two land-related Massachusetts actions with Maine & Wells implications: (1) The law which awarded ownership of all beach area to low water mark to the adjacent land owner out to 100 rods and forbidding trespass except for fishing, fowling & navigation, a law which was never enforced until Moody, Wells, a& Goose rocks Beach cases; (2) an act which essentially outlawed the many Old World fees and obligations on land holdings, essentially replacing leaseholds with freeholds

March 4, 1641: Thomas Gorge's Grant (Ogunquit area) 5000 acres

July 14, 1643: Wheelwright, Boad & Rishworth Grant & right to grant land

September 20, 1642; April 17, 1643; July 14, 1643 [3], & November 20, 1645: 6 individual deeds to Wells inhabitants from agents for Sir Ferdinando Gorges [up to this points all grants & deeds were leaseholds with annual fees or quit rents

1645-1651: Town grants of land were made by commissioners: with the exception of one grant [to Francis Littlefield in 1647], all grants and deeds in the town of Wells were issued as freeholds

1651-1653: Mass takeover of western Maine; July 4-6, 1653, Wells annexed by Massachusetts. All inhabitants designated as freemen; selectmen chosen (apparently 1st time)

October 27, 1654-Deed to land from commissioners & selectmen of Wells; apparently signal that land transactions would be made by the town selectmen.

1654-1680: Town grants of land were made by selectmen with single exception of September 9, 1685 grant to William Frost, given to him by "the Inhabitants of the Town of Wells"

1661-1668: period of political unrest (Gorges' heirs, Royal Commissioners)

1661-1664: Gorge's grant declared legal & heirs attempt to retake Maine-would have jeopardized deeds & forced payment of quit-rent past & present—failed

1664-1668: Royal Commission to America-put Maine under the Crown; status of deeds less threatened but small fee or quit-rent-never got off the ground, in 1668 Massachusetts simply returned and continued as before.

1675-1678: King Philips War (major episode) during war there were usually minimal land transactions; properties abandoned due to los of lives, captures and desertions (sometimes permanent

1677: Massachusetts purchased of Gorges' Charter

1678-1684: Maine ruled under Gorges' Charter-didn't touch deeds but those with deeds from Gorges' paid quit-rent, rest an annual fee

1684: Massachusetts' Charter annulled

1684-1688: Massachusetts part of Dominion of New England-individuals in Maine strongly pressured to reconfirm titles & pay annual quit-rents; a number of Mainers did get titles reconfirmed but no evidence that anyone from the town of Wells did so

1688-1692: Maine again governed by Massachusetts as in the period 1678-1684

1692: Massachusetts received Royal Charter & Maine included as part of the Bay Colony. Land deeds finally secure from political conflicts

1688-1697: King Williams War (major episode)

1703-1713: Queen Ann's War:(major episode)

1713: Wells Town records Clerks begin: Typical entry: March 26, 1713, "At a Leagall town meeting of the freeholders & other Town of Wells...of the then by a leagall vote [Inhabitants granted land]"

1713-1715 The Town of Wells granted at least thirty five (35) parcels of land and mostly a meadow. The layouts came later.

March 20, 1715/16: [Key document] At a Legal town meeting of the freeholders & other Inhabitants of the Town of Wells Qualified to vote in town meeting..." Postponed until Tuesday the 27th, same month, this was the meeting creating the Board of Town Proprietors. The authority for this action was a March 30, 1713 Act by the General Court outlining the structures and procedures for creating a board of town proprietors {a good number of Maine & Massachusetts set up similar groups about this time}. The verbiage of the clerk's account of this town meeting clarified the legal status of the "other inhabitants eligible to vote at a town meeting," On November 6, 1692, the Massachusetts Court passed an Act that those citizens ratable for £20 could vote in town meetings.

June 30, 1715: The Town voted a committee to survey the line between York-Kittery and Wells Eight (8) miles from the Sea and parallel to the foot line by the sea shore according to the Grant our township from Mr. Gorges.

May 04, 1717: The first Proprietors meeting, voted "committee to search the town book relating to the former grants of the Town and to bring a Report to the proprietors as soon as may be of the forfeitures of considerable grants.

July 07, 1720: The Proprietors of the Town of Wells, granted at least thirty (30) parcels, and meadows. The layouts came later.

April 04, 1722: The Proprietors voted a committee to look after the confirmation of lands andto examine the town books and proprietors books and find that the grants of lands in the town since the year 1663 are generally conditionally and the grants lands are to return to the town or proprietors in case of nonperformance of a the conditions we therefore judge it proper for all such who have compelled with the conditions in there grants respectively to lay it before the proprietors at some meeting of the proprietors in order to the confirmation there of.

February 25, 1726: The Proprietors call a meeting to confirm all ancient grants and rights that shall be found to be needful....The confirmation of all lot grants.

April 04, 1727: The Proprietors voted that “All those by purchase or heirship have a right to be proprietors.

December 30, 1734: The Proprietors confirmed about thirty five (35) land grants. Also they voted that “all the men in said town of Wells that have a house and land within the same shall be a proprietor.

1737-1742: A series of changes in voting laws during this period indicated that “freeholder or not,” one needed ratable at £ 20 or more to vote in town meetings, & almost for sure to members of the town proprietors board.

1757-1771 and on: The Town of Wells annually voted an official called “Beach Drivers” to prosecute such as shall offend Beach Act concerning the pasturing of animals, and mowing the grasses.

1870s: Major change as tourism, large hotels and beach activities changed the whole image of the sand beaches from roadways, areas to keep from invading marshlands and, except for such activities as seaweed collection, largely worth little, to areas of great economical potential